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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

MAR 23 2004

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

THE JOINT APPLICATION OF ORCHARD GRASS UTILITIES INC
AND OLDHAM COUNTY SEWER DISTRICT FOR
APPROVAL OF THE TRANSFER OF WASTE WATER
TREATMENT FACILITIES PURSUANT TO STOCK PURCHASE
AGREEMENT BETWEEN THE PARTIES

Case No. 2004-00029

**MOTION OF ORCHARD GRASS UTILITIES, INC. AND OLDHAM COUNTY SEWER
DISTRICT TO STRIKE THE REBUTTAL OF ROBERT L. MADISON**

Come the Joint Applicants, Orchard Grass Utilities, Inc., (“Orchard Grass”) and Oldham County Sewer District (“OCSD”), by counsel, and for their Motion to Strike the Rebuttal of Robert L. Madison submitted to the Public Service Commission (“Commission”) on March 16, 2004, state as follows:

KRS 278.020(4) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

Pursuant to the language of KRS 278.020(4), the Commission is required to approve the transfer of a Wastewater Treatment Plant and collection system if the person acquiring same has the “financial, technical, and managerial qualities to provide reasonable service.” Accordingly, the issue to be decided by the Commission in this case is whether the OCSD has the financial, technical, and managerial qualities to provide reasonable service to Orchard Grass’ customers and the evidence considered by the Commission should be relevant that issue.

The Rebuttal of Mr. Madison (“Rebuttal”), should be stricken from the record because

the vast majority of the statements contained or referred to in the Rebuttal are completely irrelevant to the issue of whether OSCD has the financial, technical, and managerial abilities to operate the Orchard Grass wastewater treatment plant and the Willow Creek wastewater treatment plant. Indeed, the primary focus of the Madison's Rebuttal is the rate to be charged to the customers Willow Creek by OSCD if the Joint Application is approved. The rate to be charged by OCSD would be a fixed rate \$7.67 per month, plus \$3.20 for each 1,000 gallons of water used. (See OCSD Response to Madison's Data Request No. 32). Willow Creek's current rate is \$18.45 per month. (See OCSD Response to Madison's Data Request No. 32).

I. The Newspaper Articles are Irrelevant to the Critical Issue Under Review.

The Rebuttal contains six (6) newspaper articles attached as Exhibits 4, 5, 8, 9, 10, and 17 which are certainly irrelevant to the critical issue of whether the OCSD has the financial, technical, and managerial abilities to provide reasonable service to Orchard Grass' customers, including Mr. Madison. Exhibit 4 is an article from the September 23, 2003, edition of the Courier Journal and Exhibit 5 is an article from the December 26, 2003, edition of the Courier Journal. Both of these exhibits discuss the decision Kentucky Court Appeals' decision that the Commission does not have jurisdiction over the OCSD and the fact that some of OCSD's customers will pay less for sewer service than the amounts currently paid and others will pay more than the amounts currently paid. Exhibit 8, which is an article for the January 9, 2004, edition of the Courier Journal discusses the new standard sewer rate implemented by OCSD and the fact that the rate will provide enough revenue for the OCSD to operate in the black.

Exhibit 9, which is purported to be a newspaper article, does not concern the Orchard Grass or Willow Creek wastewater treatment plant and instead addresses upgrades to be made to the Trails End wastewater treatment plant. Exhibits 10 and 17 are articles from the Courier

Journal and WHAS 11 concerning the Louisville and Jefferson County Metropolitan Sewer District. None of these articles are relevant to the critical issue to be decided in this case and should not be considered by the Commission. .

Furthermore, these articles do not contain sworn testimony and are replete with hearsay statements. The Commission should refuse to consider same for this additional reason.

II. The Alleged Conversations Between Mr. Madison and a Member of the Oldham County Fiscal Court Are Irrelevant to the Critical Issue.

The Rebuttal also refers to information allegedly obtained during two telephone conversations between Mr. Madison and Rick Rash, a member of the Oldham County Fiscal Court, and information allegedly obtained during a tour of the Willow Creek Wastewater Treatment Plant. None of the information contained in Madison's description of these conversation is relevant to whether the OCSD has the financial, technical, and managerial abilities to provide reasonable service. Likewise, Exhibit 6 to the Rebuttal, which is a notice allegedly delivered to Mr. Madison by Mr. Rash and Mr. Madison's response to this letter, which is attached as Exhibit 7, are irrelevant to the issue of rather the OSCD has the financial, technical, and managerial abilities to provide reasonable service. Exhibits 6 and 7 merely focus on OCSD's new standard rate.

Interestingly, the Rebuttal alleges that there have been "continuos (sic) quality problems with the plant including sewage overflows outside the lagoon, numerous occasions of extreme smells coming from the plant...." (See Rebuttal, p. 2). If anything, these allegations further support the approval of the transfer of the subject wastewater treatment plants to the OSCD which has the financial resources, technical expertise to insure that any such problems will be resolved. For these reasons, these statements and exhibits should not be considered by the Commission.

Furthermore, the information set forth in the Rebuttal concerning Mr. Madison's alleged telephone conversations with Mr. Rash and set forth in the letters to and from Mr. Rash is also unsworn testimony and replete with hearsay. For this additional reason the Commission should not consider this information and exhibits.

III. The Maps and Ownership of Hustbourne Business Park are Irrelevant to Whether the OCSD has the Requisite Financial, Technical and Managerial Abilities.

Rebuttal Exhibits 11, 12, 13, 14, and 15 are maps down-loaded by Mr. Madison from Map Quest and Terra Server USA. These maps are also irrelevant to the issue of whether the OCSD has the financial, technical, and managerial abilities to provide reasonable service. The same is true of Exhibit 16, which is the resume of Mr. Madison. Finally, Exhibit 18, which concerns the ownership of Hurstbourne Business Park located on Hurstbourne Lane, Louisville, Kentucky is also completely irrelevant to the critical issue in this case. Mr. Madison alleges that the Division of Water has an office at this location, and as a result there is somehow a conflict of interest between the Kentucky Division of Water and its regulation of the Willow Creek Plant. Of course, this allegation is completely baseless and ludicrous. Furthermore, if it were true, which is not the case, it would further support the transfer of the subject wastewater treatment plant to the OCSD, since the conflict would no longer exist.

IV. The Applicable Regulations of the Commission Do Not Provide For the Rebuttal Submitted by Mr. Madison.

The Rules of Procedure of the Commission set forth in 807 KAR 5:001 generally provide for the filing of complaints, applications, answers, sworn testimony, exhibits and discovery requests and answers to same. See 807 KAR 5:001, Section 3. These rules do not provide for the filing of a rebuttal, nor has any order been entered in the subject case authorizing the filing of a rebuttal.

807 KAR 5:001, Section 2(2) provides that:

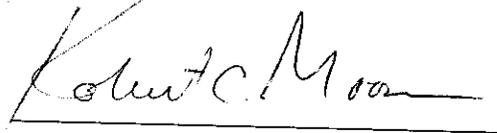
The secretary may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission.

The Rebuttal submitted by Mr. Madison on its face does not comply with the rules and regulations of the Commission as the rules do not authorize the filing of a rebuttal. The Rebuttal cannot be considered as sworn testimony as the statements made therein are not made under oath, and contain substantial heresy. The Rebuttal also cannot be considered to merely be an exhibit as it contains the arguments of Mr. Madison, and the attachments to the Rebuttal are unsworn and contain substantial heresy. For this additional reason, the Commission should strike from the record the Rebuttal submitted by Mr. Madison.

V. Conclusion.

For the reasons set forth above, it is clear that the Rebuttal of Mr. Madison is irrelevant to the issue of whether the OCSD has the financial, technical, and managerial abilities to provide reasonable service to the customers of the Orchard Grass wastewater treatment system and the Willow Creek wastewater treatment system. Accordingly, the Rebuttal should be stricken from the record.

Respectfully Submitted,

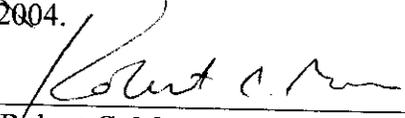


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Robert L. Madison, 5407 Baywood Drive, Louisville, Ky., 40241-1318, and David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky., 40601-8204 on this the 23rd day of March, 2004.



Robert C. Moore